INITIAL STATEMENT OF REASONS

FOR ADOPTION OF PROCEDURAL CLARIFICATIONS
TO THE ENERGY COMMISSION'S
POWER PLANT SITING REGULATIONS

Docket No. 01-SIT-1
October 2001

BACKGROUND

In response to the Legislature's direction, the California Energy Commission (Commission) has been evaluating its power plant licensing process regarding efficiency improvements, communications and public participation, agency coordination, and organization and resources.

The Commission has attempted to update, clarify, and improve the effectiveness of its power plant siting regulations in a series of rulemakings, leading to the current proceeding that continues this process.

The Energy Commission distributed initial proposed changes to its regulations for public comment and discussion at a workshop on July 23, 2001. Based on the public comment received in writing and at the workshop, several of the originally-proposed amendments have changed substantially, and are now essentially clarifications of existing practice.

Proposed Changes to the Power Plant Siting Regulations

The proposed amendments address the following topics:

- **Clarifying the powers of the presiding committee member to conduct hearings and the rights of intervenors**
- **Clarifying the noticing requirements for workshops**
- **Clarifying the role of Commission staff in relationship to other agencies.**
- **Deleting outdated regulatory language concerning demand conformance**
- **Clarifying the applicability of the existing regulations for six-month Applications for Certification.**

- **Other minor clarifications and corrections**

Clarifying the Powers of the Presiding Committee Member to Conduct Hearings and the Rights of Intervenors

Existing section 1203(c) establishes the Presiding Member's general authority to regulate the conduct of siting case hearings, including admitting or excluding evidence based upon relevancy.

Existing sections 1212(c) and 1712(b) also discuss the siting case hearing process. The proposed amendments to section 1212(c) and 1712(b) would clarify that the Presiding Member's authority under section 1203 applies to these sections, including the power to determine "relevancy."

Section 1712(b) would also be amended to clarify that the rights of intervenors specified in this provision are in addition to such other rights as the parties may have as set forth in the Regulations, including Section 1212(c).

These clarifying amendments would reflect existing administrative policy at the Commission, which neither increases nor decreases the powers of the Presiding Member or the rights of intervenors.

Clarifying the Noticing Requirements for Workshops

Existing section 1710 requires all meetings, workshops, conferences, etc. to be open to the public, but provides for a narrow exception for the informal exchange of information between an applicant and the staff or their discussion of procedural issues. The proposed amendment to section 1710(a) would clarify the circumstances under which public notice is required and not required. It would expand the exception to apply to all parties. The proposed amendment would also clarify that all discussions with the staff regarding substantive issues relative to recommendations and conditions must be publicly noticed.

Existing section 1710(h), which currently allows informal exchanges of information and procedural discussions only between an applicant and the staff without notice, would be repealed. The substance of this provision, expanded to apply to all parties, would be placed in the amended section 1710(a). The term “information” would be defined for the first time. Further clarification would be provided to allow staff meetings with other governmental agencies, other than parties, without public notice.

Other provisions of section 1710 would be amended to further clarify that they apply only to publicly noticed events, and

to delete duplicative language regarding continuances.

Conforming changes would also be made to section 1718. This includes allowing for greater flexibility in the location of public workshops in section 1718(b).

Clarifying the Role of Commission Staff in Relationship to Other Agencies.

Existing section 1742(c) specifies that Commission Staff "shall focus on those environmental matters not expected to be considered by other agencies … ." Staff currently tries to avoid duplication, normally relying upon the comments of other agencies submitted in accordance with a variety of regulations, including sections 1714, 1714.3, and 1714.5. As an independent party and pursuant to the Commission's lead agency authority under the California Environmental Quality Act, staff may also disagree with any agency comment or recommendation.

The proposed amendment adding section 1714.5(d) would state existing Commission Staff policy to give due deference to agency comments regarding conformance of a proposed powerplant to an agency's own laws, ordinances, and standards. As is the case now, staff would not be bound by any such comment it considered to be erroneous on the merits.

Deleting Outdated Language on Demand Conformance

The Legislature has repealed the requirement that the Commission make a finding regarding "need" for a power plant in its final decision. Demand conformance is thus no longer even considered as part of the licensing process. However, several regulations pertaining to demand conformance findings and requirements remain. None of these provisions currently have any regulatory effect. The proposed amendments would delete them from sections 1741(b)(1), 1748(d), and 1752(a).

Clarifying Applicability of the Existing Six-Month AFC Regulations

The Energy Commission adopted regulations beginning at section 2021 that implement the six-month AFC process created by the Legislature in Public Resources Code section 25550. Section 2021(b) currently states that it applies to applications filed pursuant to Public Resources Code section 25550.

Subsequently, the Legislature essentially created another six-month AFC statute at Public Resources Code section 25550.5 for repowering projects, where existing powerplants are modernized. This statute is similar to Public Resources Code section 25550.

The proposed amendment to section 2021(b) would eliminate any possible confusion by specifying that the six month AFC process beginning at section 2021 also applies to repowering projects filed under Public Resources code section 25550.5.

Minor Clarifications and Corrections

The following revisions are non-substantive in nature:

Section 1207(c) would be amended to specify that any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations. This clarifies and re-states the existing rights and duties of intervenors currently found in section 1712.

Section 1751(a) would be amended to clarify that the evidentiary record of the proceedings is part of the hearing record, and that findings will be made exclusively on the hearing record. "Hearing record" currently is defined in section 1702(h) to include public comments provided at hearings. This change, thus, clarifies that public comment can be considered by the Commission in making findings.

Section 1755(b) would be amended to reflect the repeal of section 1752(a) regarding demand conformance and other references are accordingly modified.

Sections 1940(c) and 1945(a) would be amended to replace an incorrect citation. The rules currently reference procedures pursuant to a non-existent Section 1942. The correct section is 1944 pertaining to hearings, and the amendment substitutes section 1944 for 1942.

REPORTS RELIED UPON

The Commission has relied upon no technical, theoretical, or empirical study, report, or similar document in drafting the proposed regulations.

CONSIDERATION OF ALTERNATIVE PROPOSALS

Before adopting the proposed regulations, the Commission must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

To date, the Commission is not aware of any reasonable alternatives to the current amendments, including reasonable alternatives that have otherwise been identified and brought to the attention of the Commission, that would be more effective and/or less burdensome than the proposed regulations in improving the Energy Commission's power plant siting

regulations.

TECHNOLOGY AND ALTERNATIVES

The proposed regulations would not impose any specific technology or equipment.

SMALL BUSINESS IMPACTS

The Commission concludes that the proposed regulations would not affect small business. The proposed regulations would be entirely procedural in nature and would impose no requirements upon any business. The Commission is therefore unaware of any alternatives which will lessen the impact upon small business.

ECONOMIC IMPACT ON BUSINESS

The Commission did not identify any significant adverse economic impacts upon business from the proposed procedural changes to the Commission's siting regulations. The changes to the powerplant siting process are designed to promote clarity and efficiency. In any case, the costs of reasonable compliance with the proposed regulations will be nonexistent or insignificant to Commission siting case applicants. The Commission bases its initial determination upon the fact that the proposed regulations merely clarify Energy Commission procedures, and place no additional burdens, duties, or expenditure requirements upon powerplant applicants.

RELATIONSHIP TO FEDERAL REGULATIONS

There are no comparable federal regulations or statutes to the Energy Commission's procedural requirements for licensing power plants in California. Thus, there are no duplications or conflicts. Nor are any California power plant siting procedural regulations mandated by the federal government.